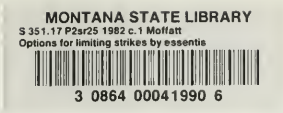

PERSONNEL AND LABOR RELATIONS STUDY COMMISSION

STAFF REPORT NO. 25

OPTIONS FOR LIMITING STRIKES BY ESSENTIAL EMPLOYEES

Objective: To provide the Personnel and Labor Relations Study Commission with follow-up information on Study Question 11, concerning impasse resolution methods.

PLEASE RETURN

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Montana is a leader when it comes to public sector employees having the right to strike. We require no notice, except in the case of nurses. We do not have any blanket provision for other employees which would prohibit public sector strikes. We, in fact, are more liberal than the private sector act after which our law is patterned.

The majority of the states which have laws providing for public sector bargaining also prohibit strikes by public employees. The language found in these laws varies from very short paragraphs to several columns, but the result is the same: no strikes by public employees. Wisconsin's law is an example of such:

> Sec. 111.89 Strike Prohibited.--(1) Upon establishing that a strike is in progress, the employer may at his option either seek an injunction or file an unfair labor practice charge with the commission under Sec. 111.84(2)(e) or both. In this regard it shall be the responsibility of the department of administration to decide whether to seek an injunction or file an unfair labor practice charge. The existence of an administrative remedy shall not constitute grounds for denial of injunctive relief.
>
> (2) The occurrence of a strike and the participation therein by a state employee do not affect the rights given to the employer to deal with the strike, including:
>
> (a) The right to impose discipline, including discharge, or suspension without pay, of any employee participating therein;
>
> (b) The right to cancel the reinstatement eligibility of any employee engaging therein; and
>
> (c) The right of the employer to request the imposition of fines, either against the labor organization or the employee engaging therein, or to sue for damages because of such strike activity. (Sec. 111.89, as amended by A.B. 475, L. 1971)

The rest of the states which do allow at least some of their public employees to strike will be discussed in more detail as follows.

Alaska: This is the only state which mandates a secret ballot on a strike vote. (See Attachment A.) The differences in such a process are two-fold: (1) a delay or "cooling-off period" for both the union and management, and (2) there would probably be less peer pressure and intimidation associated with the strike vote itself.

The procedure which is outlined in the Alaska law states that the investigating agency will "determine whether efforts to mediate . . . have been exhausted. ." This obviously mandates mediation. The process as written in their law seems cumbersome and possibly difficult to use or administer. The adoption of such a provision in the State of Montana would provide an additional burden for the Board of Personnel Appeals to carry if it was found to be appropriate for the Board to assume the duty of running these elections. This is not to say that modification of such a procedure is not appropriate; it can certainly be considered.

Hawaii: Their law prohibits certain employees from striking but does provide for some "lawful" public sector strikes. (See Attachment B.) Prior to striking, the parties are mandated to exhaust mediation and fact finding (interest arbitration is voluntary). In order to strike legally, the union must wait sixty days after the publication of the fact finder's report before striking.

Firefighters differ in that they skip fact finding and go from mediation directly to interest arbitration, thus effectively prohibiting strikes by firefighters.

Hawaii is one of two states which attempts to define "essential employees" and prohibit strikes by employees so classified. The determination of who is essential is left up to their "board". This board establishes the criteria which adjudicates such positions. This process is set in motion via employer petition to the board. The loose definition of what constitutes an essential employee in an essential position would alleviate the problem of "laundry listing" all potentially essential positions (snowplow operators in January, forest firefighters in July, etc.) The process as outlined in the Hawaii law has the effect of a quasi-judicial injunction whereby essential employees may be prevented from striking, or if on strike, required to return to work.

Minnesota: Certain public employees are prevented from striking, while others are allowed to strike under certain conditions: (1) impasse has occurred, (2) the agreement has expired, (3) the parties have been in mediation for 45+ days, and (4) the union notifies the employer at least ten days prior to striking. The cooling-off period is apparent. Please see Attachment C for additional requirements, procedures and penalties for public employees.

Minnesota is the other state besides Hawaii that attempts to define "essential employees" and limit or prevent them from striking. The full text of the provision which includes the procedure is attached as "Attachment C". The Minnesota definition of essential employee is an employee of ". . . any industry, business or institution affected with a public interest, which includes, but is not restricted to any industry, business or institution engaged in supplying the necessities of life, safety, or health, so that a temporary suspension of its operation would endanger the life, safety, health, or well-being of a substantial number of people of any community . . ."

The Minnesota law is very comprehensive and would probably require few rules to facilitate administration.

Oregon: The Oregon law prohibits strikes by employees who have access to final and binding arbitration in their agreements. There are also references in the Act to other sections of Oregon law which are unavailable to the author. Apparently, these other cites also refer to some criteria which must be met prior to legally striking. One such reference refers to the ". . .requirements . . . relating to the resolution of labor disputes have [ing] been complied with in good faith . . ."

Besides mandatory factfinding, Oregon also requires the union to wait for thirty days after publication of the factfinder's report before the strike notice. After the thirty days has lapsed, the union must then serve a ten day notice of their intention to strike. Said notice shall also contain a statement of their reason(s) for such action.

A court may grant injunctive relief to a strike, but granting such an injunction puts the dispute into mandatory interest arbitration. There is no provision for unfair labor practice strikes in the Oregon law. An additional point of interest is the section which makes the employee's refusal to cross a picket line an illegal strike.

Oregon law also prohibits strikes by police, firefighters and guards at prisons or mental hospitals. In trade for the strike prohibition, the law grants mandatory interest arbitration. Thus, Oregon has defined their "essential employees" as police, firefighters and guards.

These sections and others are included as Attachment D.

Pennsylvania: The Pennsylvania law requires that parties in dispute submit to mediation first, for a period of no more than 130 days, at which time the Board may direct factfinding. Mandatory interest arbitration is provided for ". . . units of guards at prisons or mental hospitals, or units of employees directly involved with and necessary to the functioning of the courts of this Commonwealth . . ." This section could be interpreted to define Pennsylvania's essential employees as guards and court employees. Each state obviously has their own unique idea of what and who is essential for the operation of their state.

Pennsylvania also makes honoring picket lines a punishable offense. (See Attachment E.)

Washington: Uniformed personnel in the State of Washington are specifically prevented from striking, and are provided mandatory interest arbitration. The courts or another appropriate body have surely defined what is a "uniformed employee", i.e., a nurse or game warden? The discussion of the Washington law is limited to their reference to "uniformed employees" since they have a blanket provision prohibiting public employee strikes, but without the mandatory interest arbitration. (See Attachment F.)

NLRA (as amended): The Federal law which applied to private sector employees/employers has two sections which provide for a cooling-off period. The Taft-Hartley Act, Title II, addresses situations whereby, when the parties to a collective bargaining agreement are bargaining prior to the expiration date over economic matters, and a dispute occurs, the union must give 60 days notice prior to striking.

The Labor Management Relations Act invests the President of the United States with the authority to enjoin a union from striking for 80 days if such a strike would endanger the national health or safety. During this time period, the parties to the dispute have access to mediation and factfinding in order to facilitate resolution.[1]

[1] The Developing Labor Law, Charles J. Morris, page 523.

These provisions are available to private sector employers and the Federal Government and are not available to the State of Montana, even though our public sector law is patterned from the NLRA.

Conclusion: In reviewing each of the state laws which address collective bargaining for public employees, as stated previously, the majority do not allow any of their covered employees to strike. This does not mean that there are no strikes in those states. It just means that the strikes which do take place are probably illegal, as was the air controllers' strike in the federal sector. The ramifications of an illegal strike, as opposed to one allowed by law are very different. An illegal strike could possibly cost the participants their jobs, whereas those taking part in the majority of legal strikes will be at least guaranteed their job back, if not immediately, at least when it becomes vacant.

Options for Limiting Strikes by Essential Employees

Option 1: Provide for mandatory impasse resolution including mediation and factfinding to be used before a strike by essential employees may be called.

Option 2: Provide for a cooling-off period for essential employees prior to striking.

Option 3: Provide for a mandatory notification by the union to the employer of the union's intention to take essential employees out on strike.

Option 4: Adopt a procedure for a secret strike-vote ballot per the Alaska law.

Option 5: Exempt essential employees from receiving unemployment benefits irrespective of work stoppage.

Options for Defining Essential Employees

Option 6: Define by "laundry list" who are essential employees.

Option 7: Give a broad definition in the law and allow the Board of Personnel Appeals to determine on a case-by-case basis if the employees involved in the dispute are essential.

ALASKA

Article 3. Strike Votes

2 AAC 10.270. Petition for strike vote. –When a strike vote is sought, an employee representative must petition the labor relations agency to conduct a secret ballot strike vote under the requirements of AS 23.40.200(d). A petition for a strike vote must state

(1) name and address of the public employer and the approximate number of its employees;

(2) name and affiliation, if any, of the petitioner and its address and telephone number;

(3) a description of the unit for which the strike vote petition is being filed, including lists, respectively, of those positions, if any, included in the unit believed by the petitioner to be in class (a)(1) or (a)(2) of AS 23.40.200;

(4) a brief statement of why petitioner believes a deadlock has been reached in collective bargaining including a statement as to whether or not mediation has been attempted under the provisions of AS 23.40.190 and AS 23.40.200(c);

(5) copies of stipulations, if any, entered into with the public employer with respect to such matters as eligibility lists, the dates, hours, and places of the election, the designation on the ballot, and other related election procedures; or, if no such stipulations have been entered into, petitioner's proposed procedures covering those matters enumerated in this paragraph;

(6) copies of any applicable collective bargaining agreement between petitioner and the public employer.

2 AAC 10.280. Strike vote.—(a) The labor relations agency will investigate a strike vote election petition and will determine whether efforts to mediate the dispute have been exhausted and whether the unit in which the vote is to be taken is in class (a)(1) or (a)(2) of AS 23.40.200, and will further determine whether there is any objection by the public employer.

(b) If there is an objection by the public employer the agency will, in its discretion, first attempt informal means to resolve the objection. If an objection is made only as to procedural matters, the agency will informally determine the proper procedures to be followed. If, however, there is a substantive objection as to the propriety of conducting a strike vote, the agency will set the matter for hearing at the earliest possible opportunity.

(c) A strike vote held under a stipulation by the parties or by order of the agency will be conducted by the agency in accordance with the following requirements:

(1) the public employer shall submit to the agency an alphabetical roster of all permanent and probationary employees in the unit who are determined by the labor relations agency to be in class (a)(2) or (a)(3) of AS 23.40.200 and who were on the employment roll of the public employer as of four weeks before the date of election;

(2) those employees on the roster described above who are on the employment roll of the public employer as of the date of the strike vote election and who can be contacted by the agency are eligible to vote in the election, and the agency will determine the number necessary to constitute a majority;

(3) other requirements that may be specified by order of the labor relations agency.

(d) Sec. 160 of this chapter applies except that the labor relations agency need not have a representative at each polling place.

(e) Secs. 165 — 190 of this chapter apply.

HAWAII

Sec. 89-11. Resolution of disputes: grievances; impasses.—(a) A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. In the absence of such a procedure, either party may submit the dispute to the board for a final and binding decision. A dispute over the terms of an initial or renewed agreement does not constitute a grievance.

(b) A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth an impasse procedure culminating in a final and binding decision, to be invoked in the event of an impasse over the terms of an initial or renewed agreement. In the absence of such a procedure, either party may request the assistance of the board by submitting to the board and to the other party to the dispute a clear, concise statement of each issue on which an impasse has been reached together with a certificate as to the good faith of the statement and the contents therein. The board, on its own motion, may determine that an impasse exists on any matter in a dispute. If the board determines on its own motion that an impasse exists, it may render assistance by notifying both parties to the dispute of its intent.

The board shall render assistance to resolve the impasse according to the following schedule:

(1) Mediation. Assist the parties in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public, from a list of qualified persons maintained by the board, within three days after the date of the impasse, which shall be deemed to be the day on which notification is received or a determination is made that an impasse exists.

(2) Fact-finding. If the dispute continues 15 days after the date of the impasse, the board shall appoint, within three days, a fact-finding board of not more than three members, representative of the public, from a list of qualified persons maintained by the board. The fact-finding board, shall, in addition to powers delegated to it by the public employment relations board, have the power to make recommendations for the resolution of the dispute. The fact-finding board, acting by a majority of its members, shall transmit its findings of fact and any recommendations for the resolution of the dispute to both parties within 10 days after its appointment. If the dispute remains unresolved five days after the transmittal of the findings of fact and any recommendations, the board shall publish the findings of fact and any recommendations for public information if the dispute is not referred to final and binding arbitration.

(3) Arbitration. If the dispute continues 30 days after the date of the impasse, the parties may mutually agree to submit the remaining differences to arbitration, which shall result in a final and binding decision. The arbitration panel shall consist of three arbitrators, one selected by each party, and the third and impartial arbitrator selected by the other two arbitrators. If either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a neutral arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel had been selected by the parties as described above. The arbitration panel shall take whatever actions necessary, including but not limited to inquiries, investigations, hearings, issuance of subpoenas, and administering oaths, in accordance with procedures prescribed by the board

to resolve the impasse. If the dispute remains unresolved within 50 days after the date of impasse, the arbitration panel shall transmit its findings and its final and binding decision on the dispute to both parties. The parties shall enter into an agreement or take whatever action is necessary to carry out and effectuate the decision. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies, and the employer shall submit all such items agreed to in the course of negotiations within 10 days to the appropriate legislative bodies.

(4) The costs for mediation and fact-finding shall be borne by the board. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties involved in the dispute.

(c) If the parties have not mutually agreed to submit the dispute to final and binding arbitration, either party shall be free to take whatever lawful action it deems necessary to end the dispute; provided that no action shall involve the disruption or interruption of public services within sixty days after the fact-finding board has made public its findings of fact and any recommendations for the resolution of the dispute. The employer shall submit to the appropriate legislative bodies his recommendations for the settlement of the dispute on all cost items together with the findings of fact and any recommendations made by the fact-finding board. The exclusive representative may submit to the appropriate legislative body its recommendations for the settlement of the dispute on all cost items.

(d) Notwithstanding any other law to the contrary, if a dispute between a public employer and the exclusive representative of optional appropriate bargaining unit (11), firefighters, exists over the terms of an initial or renewed agreement, the board shall assist in the voluntary resolution of the impasse by appointing a mediator within three days after the date of impasse. If the dispute continues to exist 15 working days after the date of impasse, the dispute shall be submitted to arbitration proceedings as provided herein.

The board shall immediately determine whether the parties to the dispute have mutually agreed upon an arbitration procedure and whether the parties have agreed upon a person or persons whom the parties desire to be appointed as the arbitrator or as a panel of arbitrators, as the case may be.

If the board determines that an arbitration procedure mutually agreed upon by the parties will result in a final and binding decision, and that an arbitrator or arbitration panel has been mutually agreed upon, it shall appoint such arbitrator or arbitration panel and permit the parties to proceed with the arbitration procedure mutually agreed upon.

If, after 18 working days from the date of impasse the parties have not mutually agreed upon an arbitration procedure and an arbitrator or arbitration panel, the board shall immediately notify the employer and the exclusive representative that the issues in dispute shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.

Within 21 working days from the date of impasse, two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The impartial third member of the arbitration panel shall be selected by the two previously selected panel members and shall chair the arbitration panel.

In the event that the two previously selected arbitration panel members fail to select an impartial third arbitrator within 24 working days from the date of impasse, the board shall request the American Arbitration Association, or its succes-

sor in function, to furnish a list of five qualified arbitrators from which the impartial arbitrator shall be selected. Within five calendar days after receipt of such list, the parties shall alternately strike names therefrom until a single name is left, who shall be immediately appointed by the board as the impartial arbitrator and chairman of the arbitration panel.

Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a complete final offer which shall constitute a complete agreement and shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions it is proposing for inclusion in the final agreement.

Within 20 calendar days of its appointment, the arbitration panel shall commence a hearing at which time the parties may submit either in writing or through oral testimony, all information or data supporting their respective final offers. Nothing in this section shall be construed to prohibit the parties from reaching a voluntary settlement on the unresolved issues, with or without the assistance of a mediator, at any time prior to the conclusion of the hearing conducted by the arbitration panel.

Within 30 calendar days after the conclusion of the hearing, a majority of the arbitration panel shall select the most reasonable of the complete final offers submitted by the parties and shall issue a final and binding decision incorporating that offer without modification.

In reaching a decision, the arbitration panel shall give weight to the factors listed below and shall include in a written opinion an explanation of how the factors were taken into account in reaching the decision:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public.

(4) The financial ability of the employer to meet these costs.

(5) The present and future general economic condition of the counties and the State.

(6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours, and conditions of employment of other persons performing similar services, and of other State and county employees generally.

(7) The average consumer prices for goods or services, commonly known as the cost of living.

(8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(10) Such other factors; not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, factfinding, arbitration, or otherwise between the parties, in the public service or in private employment.

The decision of the arbitration panel shall be final and binding upon the parties. The parties shall enter into an agreement or take whatever action is necessary to carry out and effectuate the decision. The parties may, at any time and by mutual agreement, amend or modify the decision.

Agreements reached pursuant to the decision of an arbitration panel as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for imple-

mentation shall be subject to appropriations by the appropriate legislative bodies and the employer shall submit all such items within 10 days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.

The costs for mediation shall be borne by the board. All other costs incurred by either party in complying with these provisions, including the costs of its selected member on the arbitration panel, shall be borne by the party incurring them, exeept that all costs and expenses of the impartial arbitrator shall be borne equally by the parties. (Sec. 89-11(a) to (d), as amended by Act 108, L. 1978)

Sec. 89-12. Strikes, rights and prohibitions. — (a) Participation in a strike shall be unlawful for any employee who (1) is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the board, or (2) is included in an appropriate bargaining unit for which process for resolution of a dispute is by referral to final and binding arbitration, or (3) is an essential employee.

(b) It shall be lawful for an employee, who is not prohibited from striking under paragraph (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike after (1) the requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith, (2) the proceedings for the prevention of any prohibited practices have been exhausted, (3) 60 days have elapsed since the fact-finding board has made public its findings and any recommendation, (4) the exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.

(c)(1) If a strike, which may endanger the health or safety of the public, is about to occur or is in progress, the public employer concerned may petition the board to make an investigation. If the board finds that there is imminent or present danger to the health or safety of the public, the board shall establish specific requirements that must be complied with and which shall include, but not be limited to: (i) designation of essential positions; and (ii) any other requirement it deems necessary in order to avoid or remove any imminent or present danger to the health or safety of the public.

(2) The public employer shall give notice to an essential employee: (i) by serving or delivering a copy thereof to the essential employee being notified; or (ii) by mailing a copy thereof by certified or registered mail, return receipt requested, deliverable to the addressee only, addressed to the essential employee being notified at his place of residence; or (iii) if service cannot be effected as set forth in (2)(i) or (2)(ii) above, or if the strike is in progress, by publishing at least once a day for three consecutive days, a copy thereof in both of the newspapers having the largest general circulation in the State. After the final publication, it shall be conclusively presumed that the essential employee has received such notice. After receipt of notice, it shall be the duty of the essential employee to contact the public employer for his work assignment.

(d) No employee organization shall declare or authorize a strike of employees, which is or would be in violation of this section. Where it is alleged by the public employer that an employee organization has declared or authorized a strike of employees which is or would be in violation of this section, the public employer may apply to the board for a declaration that the strike is or would be unlawful and the board, after affording an opportunity to the employee organization to be heard on the application, may make such a declaration.

(e) If any employee organization or any employee is found to be violating or failing to comply with the requirements

of this election or if there is reasonable cause to believe that an employee organization or an employee will violate or fail to comply with such requirements, the public employer affected shall forthwith institute appropriate proceedings in the circuit in which the violation occurs to enjoin the performance of any acts or practices forbidden by this section, or to require the employee organization or employees to comply with the requirements of this section. Jurisdiction to hear and dispose of all actions under this section if conferred upon each circuit court, and each court may issue, in compliance with Ch. 380, such orders and decrees, by way of injunction, mandatory injunction, or otherwise, as may be appropriate to enforce this section. The right to a jury trial shall not apply to any proceeding brought under this section. (Sec. 89-12(a) to (e), as amended by Act. 252, L. 1980, effective June 13, 1980)

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(17) "Strike" means a public employee's refusal, in concerted action with others, to report for duty, or his wilful absence from his position, or his stoppage of work, or his abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; and except in the case of absences authorized by public employers, includes such refusal, absence, stoppage, or abstinence by any public employee out of sympathy or support for any other public employee who is on strike or because of the presence of any picket line maintained by any other public employee; provided, that nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of employment.

(18) "Supervisory employee" means any individual having authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(19) "Essential employee" means an employee designated by the public employer to fill an essential position.

(20) "Essential position" means any position designated by the board as necessary to be worked in order to avoid or remove any imminent or present danger to the public health or safety, which position shall be filled by the public employer. (Sec. 89-2(1) to (20), as amended by Act 252, L. 1980)

MINNESOTA

Sec. 179.07. Labor dispute affecting public interests; procedure—If the dispute is in any industry, business, or institution affected with a public interest, which includes, but is not restricted to any industry, business, or institution engaged in supplying the necessities of life, safety, or health, so that a temporary suspension of its operation would endanger the life, safety, health, or well-being of a substantial number of people of any community, the provisions of Section 179.06 shall apply and the director of mediation services shall also notify the governor who may appoint a commission of three to conduct a hearing and make a report on the issues involved and the merits of the respective contentions of the parties to the dispute. If the governor decides to appoint a commission, he shall so advise the director who shall immediately notify the parties to the labor dispute and also inform them of the date of the notification to the governor. The members of such commission shall on account of vocations, employment, or affiliations be representatives of employees, employers, and the public, respectively. Such report shall be filed with the governor not less than five days before the end of the 30-day period hereinafter provided and may be published as he may determine in one or more legal newspapers in the counties where the dispute exists. If and when the governor shall notify the director of his decision to appoint a commission, neither party to the dispute shall make any change in the situation affecting the dispute and no strike or lockout shall be instituted until 30 days shall have elapsed after the notification to the governor. In case the governor shall fail to appoint a commission within five days after the notification to him, this limitation on the parties shall be suspended and inoperative. If the governor shall thereafter appoint a commission, no strike or lockout having been instituted in the meantime, the limitation shall again become operative, but in no case for more than the 30-day period. The 30-day period may be extended by stipulation upon the record of the hearing before the commission or by written stipulation signed by the parties to the labor dispute and filed with the director. If so extended, the report of the commission shall be filed with the governor not less than five days before the end of the extended period.

ED. NOTE: The Minnesota Supreme Court held that the Labor Relations Act is applicable to a charitable hospital and its maintenance and professional employees. The right so bargain collectively, it said, does not depend on the nature of the employer's operations (Northwestern Hospital v. Public Building Service Employees' Union, 7 LRRM 734, 294 N.W. 215). Also see law banning strikes by employees of charitable hospitals below.

For other rulings, see LR ▶ 42 20.

Sec. 179.08. Powers of commission appointed by governor—(1) The commission appointed by the governor pursuant to the provisions of Secs. 179.01 to 179.17 shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter involved in any such hearing, and may by its chairman administer oaths and affirmations, and may examine witnesses. Such attendance of witnesses and the production of such evidence may be required from any place in the state at any designated place of hearing, but hearings shall be held in a county where the labor dispute has arisen or exists;

(2) In case of contumacy or refusal to obey a subpoena issued under clause (1) of this section, the district court of the state for the county where the proceeding is pending or in which the person guilty of such contumacy or refusal to obey is found, or resides, or transacts business, on application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, there to produce evidence as so ordered, or there to give testimony touching the matter under investigation or in question, and any failure to obey such order of the court may be punished by the court as a contempt thereof;

(3) Any party to or party affected by the dispute may appear before the commission in person or by attorney or by their representative, and shall have the right to offer competent evidence and to be heard on the issues before the report is made.

Any commissioner so appointed shall pe paid a per diem of $75.00 and their necessary expenses while serving.

(11). "Essential employee" means firefighters, peace officers subject to licensure pursuant to Secs. 626.84 to 626.855, guards at correctional facilities, and employees of hospitals other than state hospitals; provided that (1) with respect to state employees, "essential employee" means all employees in the law enforcement, health care professional, correctional guards, and supervisory collective bargaining units, irrespective of severance, and not other employees, and (2) with respect to University of Minnesota employees, "essential employee" means all employees in the law enforcement, nursing professional and supervisory units, irrespective of severance, and no other employees. The term "firefighters" means salaried employees of a fire department whose duties include, directly or indirectly, controlling, extinguishing, preventing, detecting, or investigating fires. (Sec. 179.63(11), as amended by S.F. 2085, L. 1980, effective April 25, 1980)

ED. NOTE: Court clerical employees are "essential employees" under Sec. 179.63(11) above, and thus are entitled to be placed in a separate bargaining unit, according to the state Supreme Court. Court employees, the court found, perform services essential to public health and safety and are indispensable to prompt and orderly functioning of the judicial system (Hennepin County Court Employees v. PERB, Minn SupCt, 100 LRRM 2754, January 5, 1979)

For other rulings, see LR ▶ 100.20.

Sec. 179.64. Strikes; prohibitions; penalties.—Except as otherwise provided by subdivision 1a and Sec. 32, public employees, other than confidential, essential, managerial, and supervisory employees and other than principals and assistant principals, may strike only under the following circumstances:

(1)(a) The collective bargaining agreement between their exclusive representative and their employer has expired or, if there is no agreement, impasse under Sec. 32 [Sec. 179.692] has occurred; and (b) the exclusive representative and the employer have participated in mediation over a period of at least 45 days, provided that the mediation period established by Sec. 32 shall govern negotiations pursuant to that section. For the purposes of this subclause the mediation period commences on the day following receipt by the director of a request for mediation; and (c) written notification of intent to strike was served on the employer and the director by the exclusive representative on or after the expiration date of the collective bargaining agreement, or, if there is no agreement, on or after the date impasse under Sec. 32 [Sec. 179.692] has occurred and at least 10 days prior to the commencement of the strike, provided that if more than 30 days have expired after service of a notification of intent to strike, no strike may commence until 10 days after service of a new written notification; or

(2) The requirements of clause (1) have been satisfied and a request for binding arbitration has been rejected pursuant to Sec. 179.69; or

(3) The employer violates Sec. 179.68(2), clause (9); or

(4) In the case of state employees, (a) the legislative commission on employee relations has not given approval during a legislative interim to a negotiated agreement or arbitration award pursuant to Sec. 179.74(5), within 30 days after its receipt; or (b) the entire legislature rejects or fails to ratify a negotiated agreement or arbitration award, which has been approved during a legislative interim by the legislative commission on employee relations, at a special legislative session called to consider it, or at its next regular legislative session, whichever occurs first.

Written notification of intent to strike, under clauses (3) or (4), shall be served on the employer and the director by the exclusive representative at least 10 days prior to the commencement of the strike, provided that if more than 30 days have expired after service of a notification of intent to strike, no strike may commence until 10 days after service of a new written notification.

(1a) Strikes authorized: teachers.—Except as otherwise provided by Sec. 31, teachers employed by a local school district, other than principals and assistant principals, may strike only under the following circumstances:

(1)(a) The collective bargaining agreement between their exclusive representative and their employer has expired or, if there is no agreement, impasse under Sec. 31 has occurred; and

(b) The exclusive representative and the employer have participated in mediation over a period of at least 60 days, 30 days of which have occurred after the expiration date of the collective bargaining agreement, provided that the mediation period established by Sec. 31 [Sec. 179.691] shall govern negotiations pursuant to that section. For the purposes of this sub-clause, the mediation period commences on the day following receipt by the director of a request for mediation; and

(c) Written notification of intent to strike was served on the employer and the director by the exclusive representative on or after the expiration date of the collective bargaining agreement, or, if there is no agreement, on or after the date impasse under Sec. 31 [Sec. 179.691] has occurred and at least 10 days prior to the commencement of the strike, provided that if more than 30 days have expired after service of a notification of intent to strike, no strike may commence until 10 days after service of a new written notification; and (d) a request for binding arbitration has been rejected pursuant to Sec. 179.69; or

(2) 45 days after impasse pursuant to Sec. 30 neither party has requested arbitration; or

(3) The employer violates Sec. 179.68(2), clause (9).

Written notification of intent to strike under clauses (2) and (3) shall be served on the employer and the director by the exclusive representative at least 10 days prior to the commencement of the strike, provided that if more than 30 days have expired after service of a notification of intent to strike, no strike may commence until 10 days after service of a new written notification, and further provided that notice of intent to strike under clause (2) shall be given no earlier than the last day of the period provided in clause (2).

(1b) — Except as authorized in this section, all strikes by public employees shall be illegal. Except as provided in this section, no unfair labor practice or violation of Secs. 179.61 to 179.76 by a public employer shall give public employees a right to strike. Those factors may be considered, however, by the court in mitigation of or retraction of any penalties provided by this section.

During the period after contract expiration and prior to the date when the right to strike matures, and for additional time if agreed, the terms of an existing contract shall continue in effect and shall be enforceable upon both parties.

(2). Notwithstanding any other provision of law, any public employee who strikes in violation of the provisions of this section may have his appointment or employment terminated by the employer effective the date the violation first occurs. The termination shall be made by serving written notice served upon the employee. Service may be made by certified mail.

(3). For purposes of the subdivision an employee who is absent from any portion

of his work assignment without permission, or who abstains wholly or in part from the full performance of his duties without permission from his employer on the date or dates when a strike not authorized by this section occurs is prima facie presumed to have engaged in an illegal strike on the date or dates involved.

(4). A public employee who knowingly participates in a strike in violation of the provisions of this section and whose employment has been terminated pursuant to this section, may subsequently be appointed or reappointed, employed or reemployed, but the employee shall be on probation for two years with respect to the civil service status, tenure of employment, or contract of employment to which he was previously entitled.

No employee shall be entitled to any daily pay, wages, reimbursement of expenses, or per diem for the days on which he engaged in a strike.

(5). Any public employee, upon request, shall be entitled, to request the opportunity to establish that he did not violate the provisions of this section. The request must be filed in writing with the officer or body having the power to remove the employee, within 10 days after notice of termination is served upon him. The employing officer, or body, shall within 10 days commence a proceeding at which the employee shall be entitled to be heard for the purpose of determining whether the provisions of this section have been violated by the public employee. If there are contractual grievance procedures, laws, or rules establishing proceedings to remove the public employee, the hearing shall be conducted in accordance with whichever procedure the employee elects provided that the election shall be binding and shall terminate any right to the alternative procedures. The same proceeding may include more than one employee's employment status if the employees' defenses are identical, analogous or reasonably aimilar. The proceedings shall be undertaken without unnecessary delay. Any person whose termination is sustained in the administrative or grievance proceeding may secure a review of his removal by serving a notice of appeal upon the employer removing him within 20 days after the results of the hearing have been announced. This notice, with proof of service thereof, shall be filed within 10 days after service, with the clerk of the district court in the county where the employer has its prinicipal office or in the county where the employee last was employed by the employer. The district court shall have jurisdiction to review the matter in the same manner as on appeal from administrative orders and decisions. This hearing shall take precedence over all matters before the court and may be held upon 10 days written notice by either party. The court shall make such order as it deems proper. An employer may obtain review of a decision to reinstate an employee in the same manner as provided for appeals by employees in this subdivision. An appeal may be taken from the district court order to the supreme court.

(6). An employee organization which has been found pursuant to Sec. 179.68 to have violated this section shall upon such finding lose its status, if any, as exclusive representative following such finding; and may not be so certified by the director for a period of two years following such finding; nor may any employer deduct employee payments to any such organization for a period of two years.

(7). Either a violation of Sec. 179.68(2), clause (9), or a refusal by the employer to request binding arbitration when requested by the exclusive representative pursuant to Sec. 179.69, (3) or (5) or, as applied to state employees, a disapproval by the legislative commission on employee relations pursuant to Sec. 2 [Ch. 332, L. 1979, establishing legislative commission on employee relations] or failure by the legislature to approve a negotiated agreement or arbitration award pursuant to Sec. 179.74, is a defense to violation of this section, except as to essential employees. As to all public employees, no other unfair labor practice or violation of Secs. 179.61 to 179.76 by a public employer shall be a violation of this section but may be considered by the court in mitigation of or retraction of any penalties as to employees and employee organizations. (Sec. 179.64(1) to (7), as amended by S.F. 2085, L. 1980, effective July 1, 1980)

OREGON

Sec. 243.726. Public employe strikes; equitable relief against certain strikes; effect of unfair labor practice charge on prohibited strike.—(1) Participation in a strike shall be unlawful for any public employe who is not included in an appropriate bargaining unit for which an exclusive representative has been certified by the board or recognized by the employer; or is included in an appropriate bargaining unit which provides for resolution of a labor dispute by referral to final and binding arbitration; or when the strike is not made lawful under ORS 240.060, 240.065 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785.

(2) It shall be lawful for a public employe who is not prohibited from striking under subsection (1) of this section and who is in the appropriate bargaining unit involved in a labor dispute to participate in a strike after:

(a) The requirements or ORS 243.712 and 243.722 relating to the resolution of labor disputes have been complied with in good faith;

(b) The proceedings for the prevention of any prohibited practice have been exhausted;

(c) Thirty days have elapsed since the board has made public the factfinders findings of fact and recommendations; and

(d) The exclusive representative has given 10 days' notice by certified mail of its intent to strike and stating the reasons for its intent to strike to the board and the public employer.

(3)(a) Where the strike concurring or is about to occur creates a clear and present danger or threat to the health, safety or welfare of the public, the public employer concerned may petition the circuit court of the county in which the strike has taken place or is to take place for equitable relief including but not limited to appropriate injunctive relief.

(b) If the strike is a strike of state employes the petition shall be filed in the Circuit Court of Marion County.

(c) If, after hearing, the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public, it shall grant appropriate relief. Such relief shall include an order that the labor dispute be submitted to final and binding arbitration within 10 days of the court's order. The manner of selection of a board of arbitration shall be as set forth in ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785.

(4)(a) No labor organization shall declare or authorize a strike of public employes which is or would be in violation of this section. When it is alleged in good faith by the public employer that a labor organization has declared or authorized a strike of public employes which is or would be in violation of this section, the employer may petition the board for a declaration that the strike is or would be unlawful. The board, after conducting an investigation and hearing, may make such declaration if it finds that such declaration or authorization of a strike is or would be unlawful.

(b) When a labor organization or individual disobeys an order of the appropriate circuit court issued pursuant to enforcing an order of the board involving this section and ORS 243.736, they shall be punished according to the provisions of ORS Ch. 33, except that the amount of the fine shall be at the discretion of the court.

(5) An unfair labor practice by a public employer shall not be a defense to a prohibited strike. The board upon the filing of an unfair labor charge alleging that a public employer has committed an unfair labor practice during or arising out of the collective bargaining procedures set forth in ORS 243.712 and 243.722, shall take immediate action on such charge and if required, petition the court of competent jurisdiction for appropriate relief or a restraining order.

(6) As used in this section, "danger or threat to the health, safety, or welfare of the public" does not include an economic or financial inconvenience to the public or to the public employer that is normally incident to a strike by public employes. (As added by Ch. 257, L. 1979, effective September 2, 1979)

Sec. 243.742. Binding arbitration where strike prohibited.—(1) It is the public policy of the State of Oregon that where the right of employes to strike is by law prohibited, it is requisite to the high morale of such employes and the efficient operation of such departments to afford an alternate, expeditious, effective and binding procedure for the resolution of labor disputes and to that end the provisions of ORS 240.060, 240.065, 240.080, 240.123, 243.650 to 243.782, 292.055, 341.290, 662.705, 662.715 and 662.785, providing for compulsory arbitration, shall be liberally construed.

(2) When the procedures set forth in ORS 243.712 and 243.722, relating to mediation and factfinding of a labor dispute, have not culminated in a signed agreement between the parties who are prohibited from striking, the public employer or exclusive representative of its employes shall petition the board in writing to initiate binding arbitration. In lieu of a petition, the board on its own motion may initiate such arbitration if it deems it appropriate and in the public interest.

Sec. 243.732. Refusal to cross picket line as prohibited strike.—Public employees, other than those engaged in a nonprohibited strike, who refuse to cross a picket line shall be deemed to be engaged in a prohibited strike and shall be subject to the terms and conditions of ORS 243.726, pertaining to prohibited strikes.

Sec. 243.736. Strikes by policemen, firement and certain guards prohibited.—It shall be unlawful for any policeman, fireman or guard at a correctional institution or mental hospital to strike or recognize a picket line of a labor organization while in the performance of official duties.

PENNSYLVANIA

Article VIII—Collective Bargaining Impasse

Sec. 801. If after a reasonable period of negotiation, a dispute impasse exists between the representatives of the public employer and the public employees, the parties may voluntarily submit to mediation but if no agreement is reached between the parties within twenty-one days after negotiations have commenced, but in no event later than 150 days prior to the "budget submission date," and mediation has not been utilized by the parties, both parties shall immediately, in writing, call in the service of the Pennsylvania Bureau of Mediation.

Sec. 802. Once mediation has commenced, it shall continue for so long as the parties have not reached an agreement. If, however, an agreement has not been reached within twenty days after mediation has commenced or in no event later than 130 days prior to the "budget submission date," the Bureau of Mediation shall notify the board of this fact. Upon receiving such notice the board may in its discretion appoint a fact-finding panel which panel may consist of either one or three members. If a panel is so designated or selected it shall hold hearings and take oral or written testimony and shall have subpoena power. If during this time the parties have not reached an agreement, the panel shall make findings of fact and recommendations:

(1) The findings of fact and recommendations shall be sent by registered mail to the board and to both parties not more than 40 days after the Bureau of Mediation has notified the board as provided in the preceding paragraph.

(2) Not more than ten days after the findings and recommendations shall have been sent, the parties shall notify the board and each other whether or not they accept the recommendations of the fact-finding panel and if they do not, the panel shall publicize its findings of fact and recommendations.

(3) Not less than five days nor more than 10 days after the publication of the findings of fact and recommendations, the parties shall again inform the board and each other whether or not they will accept the recommendations of the fact-finding panel.

(4) The Commonwealth shall pay one-half the cost of the fact-finding panel; the remaining one-half of the cost shall be divided equally between the parties. The board shall establish rules and regulations under which panels shall operate, including, but not limited to, compensation for panel members.

Sec. 803. If the representatives of either or both the public employees and the public employer refuse to submit to the procedures set forth in Secs. 801 and 802 of this article, such refusal shall be deemed a refusal to bargain in good faith and unfair practice charges may be filed by the submitting party or the board may on its own, issue an unfair practice complaint and conduct such hearings and issue such orders as provided for in Article XIII.

Sec. 804. Nothing in this article shall prevent the parties from submitting impasses to voluntary binding arbitration with the proviso the decisions of the arbitrator which would require legislative enactment to be effective shall be considered advisory only.

Sec. 805. Notwithstanding any other provisions of this act where representatives of units of guards at prisons or mental hospitals or units of employees directly involved with and necessary to the functioning of the courts of this Commonwealth have reached an impasse in collective bargaining and mediation as required in Sec. 801 of this article has not resolved the dispute, the impasse shall be submitted to a panel of arbitrators whose decision shall be final and binding upon both parties with the proviso that the decisions of the arbitrators which would

require legislative enactment to be effective shall be considered advisory only.

Sec. 806. Panels of arbitrators for bargaining units referred to in Sec. 805 of this article shall be selected in the following manner:

(1) Each party shall select one member of the panel, the two so selected shall choose the third member.

(2) If the members so selected are unable to agree upon the third member within 10 days from the date of their selection, the board shall submit the names of seven persons, each party shall alternately strike one name until one shall remain. The public employer shall strike the first name. The person so remaining shall be the third member and chairman.

Sec. 807. Whenever a panel of arbitrators is hereafter constituted pursuant to the provisions of Sec. 806 of the act of July 23, 1970 (P. L. 563, No. 195), known as the "Public Employee Relations Act," the cost of the arbitrator selected by each party shall be paid by the respective party selecting the arbitrator. The cost of the impartial arbitrator selected by the arbitrators already selected or selected in accordance with the procedure set forth in Sec. 806(2) of the act of July 23, 1970 (P. L. 563, No. 195), known as the "Public Employee Relations Act," shall be paid by the Pennsylvania Labor Relations Board. (As amended by Act 67, L. 1976)

Article X—Strikes

Sec. 1001. Strikes by guards at prisons or mental hospitals, OR employees directly involved with and necessary to the functioning of the courts of this Commonwealth are prohibited at any time. If a strike occurs the public employer shall forthwith initiate in the court of common pleas of the jurisdiction where the strike occurs, an action for appropriate equitable relief including but not limited to injunctions. If the strike involves Commonwealth employees, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief either in the court of common pleas of the jurisdiction where the strike has occurred or the Commonwealth Court.

Sec. 1003. If a strike by public employees occurs after the collective bargaining processes set forth in Secs. 801 and 802 of Article VIII of this act have been completely utilized and exhusted, it shall not be prohibited unless or until such a strike creates a clear and present danger or threat to the health, safety or welfare of the public. In such cases the public employer shall initiate, in the court of common pleas of the jurisdiction where such strike occurs, an action for equitable relief including but not limited to appropriate injunctions and shall be entitled to such relief if the court finds that the strike creates a clear and present danger or threat to the health, safety or welfare of the public. If the strike involves Commonwealth employees, the chief legal officer of the public employer or the Attorney General where required by law shall institute an action for equitable relief in the court of common pleas of the jurisdiction where the strike has occurred or the Commonwealth Court. Prior to the filing of any complaint in equity under the provisions of this section the moving party shall serve upon the defendant a copy of said complaint as provided for in the Pennsylvania Rules of Civil Procedure applicable to such actions. Hearings shall be required before relief is granted under this section and notices of the same shall be served in the manner required for the original process with a duty imposed upon the court to hold such hearings forthwith

Sec. 1002. Strikes by public employees during the pendency of collective bargaining procedures set forth in Secs. 801 and 802 of Article VIII are prohibited. In the event of a strike during this period the public employer shall forthwith initiate an action for the same relief and utilizing the same procedures required for prohibited strikes under Sec. 1001.

Sec. 1004. An unfair practice by a public employer shall not be a defense to a prohibited strike. Unfair practices by the employer during the collective bargaining processes shall receive priority by the board as set forth in Article XIV.

Sec. 1005. If a public employee refuses to comply with a lawful order of a court of competent jurisdiction issued for a violation of any of the provisions of this article the public employer shall initiate an action for contempt and if the public employee is adjudged guilty of such contempt, he shall be subject to suspension, demotion or discharge at the discretion of the public employer, provided the public employer has not exercised that discretion in violation of clauses (1), (2), (3) and (4) of subsection (a) of Sec. 1201, Article XII.

Sec. 1006. No public employee shall be entitled to pay or compensation from the public employer for the period engaged in any strike.

Sec. 1007. In the event any public employee refuses to obey an order issued by a court of competent jurisdiction for a violation of the provisions of this article, the punishment for such contempt may be by fine or by imprisonment in the prison of the county where the court is sitting or both in the discretion of the court.

Sec. 1008. Where an employee organization wilfully disobeys a lawful order of a court of competent jurisdiction issued for a violation of the provisions of this article, the punishment for each day that such contempt persists may be by a fine fixed in the discretion of the court.

Sec. 1009. In fixing the amount of the fine or imprisonment for contempt, the court shall consider all the facts and circumstances directly related to the contempt including but not limited to (i) any unfair practices committed by the public employer during the collective bargaining processes; (ii) the extent of the wilful defiance or resistance to the court's order; (iii) the impact of the strike on the health, safety or welfare of the public and (iv) the ability of the employee organization or the employee to pay the fine imposed.

Sec. 1010. Nothing in this article shall prevent the parties from voluntarily requesting the court for a diminution or suspension of any fines or penalties imposed. Any requests by employee representatives for such participation by the public employer shall be subject to the requirements of "meet and discuss."

Article XI—Picketing

Sec. 1101. Public employees, other than those engaged in a nonprohibited strike, who refuse to cross a picket line shall be deemed to be engaged in a prohibited strike and shall be subject to the terms and conditions of Article X pertaining to prohibited strikes.

WASHINGTON

Sec. 41.56.430. Uniformed personnel; legislative declaration.—The intent and purpose of this 1973 amendatory act is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the interrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes. (As added by Ch. 131, L. 1973)

Sec. 41.56.440. Uniformed personnel; negotiations; impasse defined; fact-finding panel; hearings; findings. — Negotiations between a public employer and the bargaining representative in a unit of uniformed personnel shall be commenced at least five months prior to the submission of the budget to the legislative body of the public employer. If no agreement has been reached 60 days after the commencement of such negotiations then, at any time thereafter, either party may declare that an impasse exists and may submit the dispute to the commission for mediation, with or without the concurrence of the other party. The commission shall appoint a mediator, who shall forthwith meet with the representatives of the parties, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect an agreement: Provided, That a mediator does not have a power of compulsion. (As amended by Ch. 184, L. 1979, effective May 14, 1979)

Sec. 41.56.450. Uniformed personnel; arbitration panel; powers and duties; hearings; findings and determination. — If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, than an arbitration panel shall be created to resolve the dispute. Within five days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within five days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairman of the arbitration panel. Upon the failure of the arbitrators to select a neutral chairman within five days, the two appointed members shall utilize one of the two following options in the appointment of the third member, who shall act as chairman of the panel: (1) By mutual consent, the two appointed members may jointly request the commission, and the commission shall appoint a third member within two days of such request. Cost of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service of the American Arbitration Association to provide a list of five qualified arbitrators from wheih the neutral chairman shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chairman shall be shared equally between the parties.

The arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute, provided, that the require-

ments of Ch. 34.04 RCW do not apply to such notice. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chairman of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel shall have the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and such court shall have jurisdiction to issue an appropriate order. Any failure to obey such order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chairman of the arbitration panel, unless the parties agree to a longer period.

The neutral chairman shall consult with the other members of the arbitration panel and, within days following the conclusion of the hearing, the neutral chairman shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members or the arbitration panel, and on each parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question whether the decision of the panel was arbitrary or capricious. (As amended by Ch. 184, L. 1979, effective May 14, 1979)

Sec. 41.56.460. Uniformed personnel; arbitration panel; basis for determination. — In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer.

(b) Stipulations of the parties.

(c) Comparison of the wages, hours and conditions of employment of the uniformed personnel of cities and counties involved in the proceedings with the wages, hours, and conditions of employment of uniformed personnel of cities and counties respectively of similar size on the west coast of the United States.

(d) The average consumer prices for goods and services, commonly known as the cost of living.

(e) Changes in any of the foregoing circumstances during the pendency of the proceedings.

(f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment. (As amended by Ch. 184, L. 1979, effective May 14, 1979)

Sec. 41.56.470. Uniformed personnel; arbitration panel; rights of parties.— During the pendency of the proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under this 1973 amendatory act. (As added by Ch. 131, L. 1973)

Sec. 41.56.480. Uniformed personnel; refusal to submit to procedures; invoking jurisdiction of Superior Court; contempt.—If the representative of either or both the uniformed personnel and the public employer refuse to submit to the procedures set forth in RCW 41.56.440 and 41.56.450, the parties, or the commission on its own motion, may invoke the jurisdiction of the superior court

for the county in which the labor dispute exists and such court shall have jurisdiction to issue an approriate order. A failure to obey such order may be punished by the court as a contempt thereof. A decision of the arbitration panel shall be final and binding on the parties, and may be enforced at the instance of either party, the arbitration panel or the commission in the superior court for the county where the dispute arose. (As amended by Ch. 296, L. 1975)

Sec. 41.56.490. Uniformed employees; strikes prohibited; violations; fines.—The right of uniformed employees to engage in any strike, work slowdown or stoppage is not granted. Where an organization, recognized as the bargaining representative of uniformed employees subject to this chapter, as amended by this 1973 amendatory act, wilfully disobeys a lawful order of enforcement by a superior court pursuant to RCW 41.56.480 and 41.56.490, or wilfully offers resistance to such order, whether by strike or otherwise, the punishment for each day that such contempt persists, may be a fine fixed in the discretion of the court in an amount not to exceed $250 per day. Where an employer wilfully disobeys a lawful order of enforcement by a superior court pursuant to RCW 41.56.480 or wilfully offers resistance to such order, the punishment for each day that such contempt persists may be a fine, fixed at the discretion of the court in an amount not to exceed $250 per day to be assessed against the employer. (As added by Ch. 131, L. 1973)

Sec. 41.56.900.—Short title; effective date.—RCW 41.56.010 through 41.46.900 and 41.06.150 shall be known as the "Public Employees Collective Bargaining Act" and shall take effect on July 1, 1967.

Sec. 41.56.905. Uniformed personnel; additional provisions liberal construction.—The provisions of this 1973 amendatory act relating to uniformed personnel are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. If any provision of this 1973 amendatory act conflicts with any other statute, ordinance, rule or regulation of any public employer as it relates to uniformed employees, the provisions of this 1973 amendatory act shall control. (As added by Ch. 131, L. 1973)

Sec. 41.56.910. Severability.—If any provisions of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. (As added by Ch. 131, L. 1973)

Sec. 41.56.950. Retroactive pay authorized.—Whenever a collective bargaining agreement between a public employer and a bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the same parties, the effective date of such collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement and all benefits included in the new collective bargaining agreement including wage increases may accrue beginning with such effective date as established by this section. (As added by Ch. 187, L. 1971)